PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

PCT

To:

see form PCT/ISA/220 4/8

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY
(PCT Rule 43*bis*.1)

Applicant's or agent's file reference see form PCT/ISA/220	Date of mailing *(day/month/year)* see form PCT/ISA/210 (second sheet) **FOR FURTHER ACTION** See paragraph 2 below
International application No. PCT/IB2005/050185	International filing date *(day/month/year)* 17.01.2005
Priority date *(day/month/year)* 20.01.2004	
International Patent Classification (IPC) or both national classification and IPC G06F17/30	
Applicant KONINKLIJKE PHILIPS ELECTRONICS, N.V.	

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☒ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notifed the International Bureau under Rule 66.1*bis*(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA: European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Laurentowski, A Telephone No. +49 89 2399-6039

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

International application No.
PCT/IB2005/050185

Box No. I Basis of the opinion

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

   ☐ This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

   a. type of material:

   ☐ a sequence listing

   ☐ table(s) related to the sequence listing

   b. format of material:

   ☐ in written format

   ☐ in computer readable form

   c. time of filing/furnishing:

   ☐ contained in the international application as filed.

   ☐ filed together with the international application in computer readable form.

   ☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

Box No. II Priority

1. ☒ The validity of the priority claim has not been considered because the International Searching Authority does not have in its possession a copy of the earlier application whose priority has been claimed or, where required, a translation of that earlier application. This opinion has nevertheless been established on the assumption that the relevant date (Rules 43*bis*.1 and 64.1) is the claimed priority date.

2. ☐ This opinion has been established as if no priority had been claimed due to the fact that the priority claim has been found invalid (Rules 43*bis*.1 and 64.1). Thus for the purposes of this opinion, the international filing date indicated above is considered to be the relevant date.

3. Additional observations, if necessary:

Box No. V Reasoned statement under Rule 43*bis*.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes:	Claims	4-6,10,11,14-16,19,20
	No:	Claims	1-3,7-9, 12,13,17,18
Inventive step (IS)	Yes:	Claims	
	No:	Claims	1-20
Industrial applicability (IA)	Yes:	Claims	
	No:	Claims	1-20

2. Citations and explanations

see separate sheet

Re Item V.

1 Reference is made to the following documents:

D1: GB-A-2 306 869 (PATRIK GARTEN) 7 May 1997 (1997-05-07)

D2: WO 02/31828 A (KONINKLIJKE PHILIPS ELECTRONICS N.V) 18 April 2002 (2002-04-18)

D3: US 2002/138630 A1 (SOLOMON BARRY ET AL) 26 September 2002 (2002-09-26)

D4: WO 01/35667 A (LAUNCH MEDIA, INC; BOULTER, JEFFREY; BEAUPRE, TODD) 17 May 2001 (2001-05-17)

D5: PACHET F ET AL: "A combinatorial approach to content-based music selection" IEEE MULTIMEDIA, IEEE COMPUTER SOCIETY, US, vol. 7, no. 1, January 2000 (2000-01), pages 44-51, XP002165217 ISSN: 1070-986X

D6: ANONYMOUS: "iTunes keeps track of your tastes" APPLE ITUNES HOMEPAGE, [Online] 2 October 2003 (2003-10-02), pages 1-2, XP002328080 Retrieved from the Internet: URL:http://web.archive.org/web/20031002011316/http://www.apple.com/itunes/smartplaylists.html> [retrieved on 2005-05-04]

D7: VAN BUSKIRK E.: "Rio Nitrus (1.5GB) CNET editor's review" CNET REVIEWS, [Online] 22 August 2003 (2003-08-22), pages 1-2, XP002328081 Retrieved from the Internet: URL:http://reviews.cnet.com/Rio_Nitrus__1_5GB_/4514-6490_7-30474132.html> [retrieved on 2005-05-10]

2 OBJECTIONS UNDER ARTICLE 6 PCT

Claims: 9, 11, 18 and 20 do not meet the requirements of Article 6 PCT with regards to clarity because the terms "popularity" and "ancillary information", used in said claims, are vague and unclear, thus leaving the reader in doubt as to the meaning of the technical features to which they refer, thereby rendering the definition of the subject-matter of said claims unclear (Article 6 PCT).

3 INDEPENDENT CLAIM 1

3.1 The present application does not meet the criteria of Article 33(1) PCT, because the

subject-matter of claim 1 is not new in the sense of Article 33(2) PCT.
Document D2 discloses (the references in parentheses applying to this document):
A system comprising:
a playlist generator (p.4 l.11-13) with a selector (p.4 l.9-12) that is configured to select:

a) a plurality of items from a collection of items of a user (i.e. the tracks from the of "favorite track list", the "favorites" in said list being pre-selected (pre-specified) by the user with usage of the FTS option - see p.1 l.6-9 and l.23-28, p.5 l.3-12), and

b) one or more new-items (i.e. "non-favorites", being "randomly chosen tracks that are not on the favorite track list" - cf. p.1 l.19-20 and l.26-28) from one or more other sources of items (i.e. from the rest of the tracks inventory - cf. p.1 l.17-20, p.4 l.5-12, p.5 l.3-12);

and
a mixer that is configured to generate a playlist from the plurality of items and one or more new-items (i.e. the module comprising the "fudge knob" controlling the generator - see p.1 l.23-29, p.5 l.3-12),
wherein
the selector is configured to select the plurality of items and one or more new-items based on preferences of the user (see p.2 l.1-4 and l.9-11, p.4 l.14-24), and
the collection of items of the user does not include the one or more new-items (cf. p.1 l.19-20 and l.23-28).

Because all the features of claim 1 have already been disclosed in D2, the subject-matter of the said claim does not meet the requirements of Article 33 (1)-(2) PCT in respect of novelty.

3.2 For the sake of completeness, it is pointed out that the present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of claim 1 is not inventive in the sense of Article 33(3) PCT.
Document D1, regarded as the closest prior art, discloses all the features of claim 1 (see abstract, p.2 l.8-35 and p.5 l.33 - p.10 l.25), except the last one, namely that "the collection of items of the user does not include the one or more new-items".
In the case of the system disclosed in D1 this would merely mean that the system is supposed to download only songs not being already in possession of the user, i.e. only

songs that do not belong to the user's own library (cf. D1 p.2 l.28-31, p.5 l.36-38, p.6 l.10-15). **Such a functioning rule for the playlist generator is however inherently non-technical and as such does not contribute to the solution of any technical problem by providing a technical effect and thus cannot support the presence of inventive step.**

It would be obvious to the skilled person, faced with a problem of potential downloading multimedia items (e.g. songs) already possessed by the user of the system according to D1, and prompted by the fact that the user has to pay for the material downloaded from external sources (cf. D1 p.7 l.26-35 ff.), to arrive at and implement a solution according to claim 1.

For these reasons the subject-matter of claim 1 does not meet the requirements of Article 33 (1) (3) PCT in respect of inventive step.

4 INDEPENDENT CLAIM 12

Independent claim 12 contains only corresponding features to claim 1 and therefore it does not meet the requirements of Article 33 (1) (3) PCT in respect of inventive step for the same reasons as stated above.

5 INDEPENDENT CLAIMS 1, 12 AS IMPLEMENTATION OF HUMAN BEHAVIOUR

It is pointed out that the method of claim 12 is anticipated by the human practice of building a playlist (e.g. of MP3 tracks) manually, out of

a) songs being part of the users's private collection and
b) new songs, e.g. downloaded or purchased from the Internet (e.g. from a music portal like Apple iTunes or obtained from a friend),

as well known at the priority date.

The current wording of claim 12 does not comprise any limitation as to automatic implementation of said method (e.g. in a computer). Consequently, its entirely manual execution falls in scope of said wording, thus anticipating it and raising doubts as to the novelty of claimed subject matter (Article 33 (1)-(2) PCT) even if the disclosure of document D2 is not taken into account.

However, even if said wording is interpreted as a computer-implemented method, a mere idea of automating human behaviour does not involve inventive step (Article 33 (1) (3) PCT). The same reasoning could be applied, mutatis mutandis, to the independent claim 1.

6 DEPENDENT CLAIMS 2-11, 13-20

6.1 The dependent claims 2-11, 13-20 do not appear to contain any additional features which, in combination with the features of any claim to which they refer, meet the requirements of Article 33(2) and (3) PCT in respect of novelty and/or inventive step, since these features are either known from or suggested by the prior art (cf. D1-D5) and/or specify merely common knowledge in the technical field.